IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.994 OF 2006

M/s.Aiges (India) Marketing
Private Limited .. Petitioner.

V/s.

Union of India & Another .. Respondents.

Mr.D.B.Shroff, Senior Counsel with Mr.S.N.Kantawala with Mr.Yogesh Rohira for the Petitioner.

Mr.B.A.Desai, Addl.Solicitor General with Mr.A.S.Rao for Settlement Commission.

Mr.A.J.Rana, Senior Counsel with Mr.P.S.Jetley with Dr.T.C.Kaushik for Union of India.

Mr.M.I.Sethna, Amicus Curie.

CORAM : DR.S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 22ND JUNE, 2006.

P.C. : (Dr.S. Radhakrishnan, J.)

1. This petition has been placed before us as per the directions of the Hon'ble the Chief Justice as we had dealt with the case of the Petitioner in our earlier assignments.

2. In the year 2004, several consignments of stainless steel C.R. Sheets / coils imported and cleared by the petitioner without payment of duty under the exemption Notification No.43/2002/Customs (which was issued under the Customs Act), were seized by the

Customs authorities inter alia on the ground that the Petitioner had obtained licenses by making false declarations.

3. On issuance of the show-cause notices for recovery of duty, the Petitioner filed three settlement applications admitting total duty liability of Rs.4.65 crores and sought settlement of the cases. By an order dated 27th January, 2005, the Settlement Commission rejected the applications on the ground that the Petitioner had not admitted the entire duty liability.

4. Challenging the aforesaid order of the Settlement Commission dated 27th January, 2005, the Petitioner filed writ petition No.394 of 2005. That writ petition was placed before us for admission on 9th February, 2005 when the following order was passed.

> 1. Heard the learned counsel for the parties. The learned counsel for the respondents seeks two weeks time to file an affidavit in reply of the Commissioner (Investigation). Hence, matter stands adjourned by two weeks.
>
> 2. The learned counsel for the petitioner assures that all the requisite documents will be furnished to the concerned Commissioner (Investigation) within a period of one week from today.

5. Subsequently when the above writ petition came up for admission before another Bench, the advocate for the Petitioner sought to withdraw the writ petition and

approach the Settlement Commission in the light of the averments made in the affidavit in reply filed by Shri M.G.Rao, Junior Investigating Officer, Customs and Central Excise on 13th April, 2005. Accordingly, writ petition No.394 of 2005 was allowed to be withdrawn on 6th June, 2005 by passing the following order :

> "1. Heard the learned counsel for the parties. The learned counsel for the Petitioner has brought to our notice the averments made in Paragraph No.8 of the affidavit of Shri M.G. Rao, Junior Investigating Officer, Customs and Central Excise Settlement Commission, dated 13th April, 2005 wherein it is stated as under :
>
> > 'I say that the Settlement applications were not rejected under section 127(I) of the Customs Act, 1962, but were rejected only for want of quantification of the duty liability. Since duty liability has already been quantified as above, the petitioner now has alternate remedy of filing a fresh application for settlement after admitting the ascertained duty liability as above. In the premises, I pray that the petition be dismissed with costs.'
>
> 2. In view of the aforesaid statement, the learned counsel for the Petitioner seeks leave to withdraw this petition with liberty to approach the Settlement Commission and file a fresh application for settlement within a period of two weeks from today.
>
> 3. Petition is therefore allowed to be withdrawn and dismissed as such with the aforesaid liberty."

6. Present writ petition No.994 of 2006 has been filed by the Petitioner on 13th February, 2006 seeking release / warehousing of the seized goods which were the subject matter of the earlier writ petition No.394 of

2005. In para 3.9 of the present writ petition, it is stated that on the intervention of this Court in writ petition No.394 of 2005, the Commissioner (Investigation) filed its affidavit through an officer of the Commission and on the basis of the said affidavit, writ petition No.394 of 2005 was withdrawn and accordingly Settlement application has been filed in respect of the past consignments.

7. On perusal of the proceedings in writ petition No.394 of 2005, it was noticed that Shri G. Sreenivasa Rao, Joint Commissioner of Customs, CIV, Nhava Sheva had filed an affidavit reply on 4th April, 2005 categorically stating therein that the Settlement Commission had no jurisdiction in the present case and that the Settlement Commission had rightly rejected the application of the petitioner. This affidavit was not brought to the notice of the Court by the learned Counsel for the Revenue and on the basis of the affidavit in reply filed by Mr.M.G.Rao, Junior Investigating Officer on 13th April, 2005 to the effect that the Petitioner now has alternate remedy of filing a fresh application for settlement this Court on 6th June, 2005 permitted writ petition No.394 of 2005 to be withdrawn.

8. Since the affidavit of Shri M.G.Rao, Junior

Investigating Officer was totally contrary to the affidavit of Shri G.Sreenivasa Rao, Joint Commissioner of Customs, by an order passed in this petition on 1st March, 2006 we had called upon Shri M.G.Rao to explain the circumstances and to state as to under whose instructions he had filed the affidavit in reply on 13th April, 2005 which was totally contrary to the stand taken by the Customs Department. By the said order, we had also directed the Chief Commissioner of Customs, J.N.P.T. to look into the conduct of Shri M.G.Rao and file an affidavit to that effect.

9. Accordingly, Mr.M.G.Rao as well as the Chief Commissioner of Customs have filed their affidavits explaining the circumstances under which the affidavit was filed by Mr.M.G.Rao. Both of them have stated that the affidavit in reply dated 13th April, 2005 was filed by Mr.M.G.Rao in the light of the letter dated 11th February, 2005 addressed by Dr.T.C.Kaushik, Central Government Advocate. Today, during the course of hearing, the learned Additional Solicitor General makes a categorical statement that Mr.M.G.Rao had filed that affidavit on his own, without any instructions or authority from the Settlement Commission.

10. In his letter dated 11th February, 2005 Dr.T.C. Kaushik, Central Government Advocate had inter alia

stated as follows :-

> "..... The matter came up for hearing on 09.02.2005 before the Hon'ble Division bench comprising of the Hon'ble Mr.Justice S. Radhakrishnan and the Hon'ble Mr.Justice J.P. Devadhar. .....
>
> The matter was extensively argued and the counsel for the petitioner submitted that the application filed by the petitioner before the Hon'ble Settlement Commission fulfilled each and every condition relevant for the purpose of admission of the case. .....
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> Counsel for the department opposed the admission of the writ and submitted that the petitioner has neither accepted full duty liability nor the amount disclosed by him is certified by the office of the Jt. DGFT. .....
>
> The Hon'ble High Court observed that when the matter was pending before the Settlement Commission, Customs Authorities had no jurisdiction to issue summons repeatedly and no coercive action was warranted, since the petitioner himself approached the Settlement Commission showing his desire to pay the duty liability. .....
>
> After hearing both the sides and considering the affidavit filed by the office of the Jt. DGFT the Hon'ble Court rejected the plea raised by the Department's Counsel to submit the quantification report by the office of the Chief Commissioner of Customs and was pleased to call for an independent report from the Commissioner (investigation) showing actual duty liability of the petitioner in the form of the affidavit.
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> In these terms the Hon'ble Court was pleased to pass the interim order dated 9th February, 2005 as annexed hereto."

11. On 9th February, 2005, this Court simply adjourned the matter as the counsel for the revenue sought time to file an affidavit in reply of the Commissioner (Investigation). However, the Central

Government Advocate in his letter dated 11th February, 2005, apart from making several incorrect statements quoted hereinabove, he has falsely stated that the Court has granted interim relief in the matter. Today, Mr.Rana, on instructions from Dr.Kaushik fairly states that our order dated 9th February, 2005 was not even annexed to the letter dated 11th February, 2005 as the same was not available on 11th February, 2005. It is unfortunate that the Central Government Advocate who is supposed to safeguard the interest of the Revenue should represent to the officers of the department that there is an interim order passed against the Revenue when in fact there is none. The conduct of Central Government Advocate is highly deplorable to say the least. Similarly, even the conduct of Mr.M.G. Rao in filing an affidavit is totally contrary to the stand of the Customs department set out in the affidavit in reply filed by the Joint Commissioner of Customs.

12. Dr.T.C.Kaushik who is personally present before us today has tendered unconditional apology and has filed an affidavit to that effect in writing on 27th March, 2006. In these circumstances, we leave it to the Revenue Secretary of the Central Government and to the C.B.E.C., New Delhi to take appropriate action as they deem fit against Dr.T.C.Kaushik and Mr.M.G.Rao.

13. Mr.Shroff, the learned Senior Counsel appearing on behalf of the Petitioner seeks leave to withdraw this Petition contending that even the earlier Writ Petition No.704 of 2005 was allowed to be withdrawn. We make it clear that even otherwise we were not inclined to grant any reliefs to the Petitioner by exercising our writ jurisdiction under Article 226 of the Constitution of India. The present Writ Petition No.994 of 2006 is therefore allowed to be withdrawn and stands dismissed as such. No order as to costs.

14. The Registrar (Judicial) shall forward a copy of this order to the Revenue Secretary of the Central Government and to the C.B.E.C., New Delhi.

(Dr.S.Radhakrishnan, J.)

(J.P.Devadhar, J.)